

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1438 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KAMLABEN N DAVE

Versus

COMMISSIONER

Appearance:

MR YV SHAH for Petitioners

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/11/2000

ORAL JUDGEMENT

#. It is the grievance of the petitioners that they are serving as part-time Class-IV employees in the Nagar Prathmik Sikshan Department of Bhavnagar Municipal Corporation and that they are working as part-time

employees since 1987. It is also their say that, even though they are discharging their duties for more than 5 hours a day of watering, cleaning and other similar duties which are normally performed by regularly recruited peon, they are given the pay-scale of part-time employee and that accordingly there is a discrimination in the matter of pay-scale. It is also stated that a person who has served as part-time water server should be made permanent. It is also stated that, the petitioners are also required to be paid minimum wages as prescribed by Minimum Wages Act, 1948. It is, therefore, prayed that the petitioners should be absorbed on permanent post on regular pay-scale and that they should also be given appropriate minimum wages under the Minimum Wages Act.

#. On behalf of the Administrative Officer, affidavit-in-reply has been filed. It has been pointed out in the affidavit-in-reply that so far as payment of minimum wages is concerned, the same has been paid to the employees as per the notification issued by the Government under the provisions of the Minimum Wages Act. Averments to that effect has been made in paragraph 2.1 of the affidavit-in-reply. It has been pointed out that looking to the number of hours for which the petitioners are serving, wages are paid to them accordingly. It is pointed out that since the petitioners are performing duty for four hours, the wages are paid accordingly. So far as giving full time employment as well as giving permanent benefits, it is argued by Mr.Shah for the petitioners that it is not proper on the part of the respondents to continue such employees for a long time on such part time post. He has relied upon the Government Circular at page 19, which is the Circular of the Finance Department dated 26.12.1980. It is stated in the said Circular that the Head of the Department should examine whether part-time employment is required to be continued or not and he may also send proposal for converting such posts into regular posts. It is also stated in the said Circular at paragraph 2 that if any part time employee continues in service on part time post for three years, attempt should be made to absorb them on permanent post and such vacant post should be filled in from the part time employees. On the basis of the said Circular, it is argued by Mr.Shah that the Head of the Department has not sent any proposal by converting such part time post into full time post and the employees have not been absorbed on the regular permanent post even though some vacancies were available in the past.

#. Mr.A.R. Thakkar, learned Advocate appearing for the respondents, argued that the petitioners are serving in

various Primary Schools, which are under the control of the Administrative Officers, that the seniority list of such employees serving in the primary schools under the School Board is separately maintained, and that they are not inter-changeable with other employees who are serving on the establishment of the Municipal Corporation. It is submitted that on some posts which had fallen vacant in the Corporation, regular appointments have been made, but the present petitioners could not have been appointed on those posts since they are serving in the Primary Schools. Mr.Thakkar denied that any regular appointment has been made in primary schools bypassing the claims of the petitioners. He submitted that except petitioner Nos. 19 and 20, others have already been accommodated on regular posts in Primary Schools.

#. Considering the aforesaid rival submissions, I am of the opinion that the respondents should not have continued these petitioners for such a long time on part-time basis and the benefit of the Circular Annexure 'D' should have been given to such employees. Mr.Thakkar, however, submitted that because of some financial constraint, the posts on which they were serving, could not be converted into full time posts. It is not in dispute that now the grievance which is required to be considered is that of petitioner Nos. 19 and 20. Mr.Thakkar has, however, submitted that on first available regular vacancy, posting will be given to the present petitioner Nos. 19 and 20 and they will be given regular pay scale immediately. According to him, at present, no permanent vacancy is available in any of the Primary Schools which are managed by the Administrative Officer. He has also stated that before appointing any other employee on regular basis, petitioner Nos. 19 and 20 will be absorbed first. It is no doubt true that the Head of the Department should have sent proposal as per the Circular at Annexure 'D'. Under the circumstances, the respondent No.2 is directed to absorb petitioner Nos. 19 and 20 on first available post on regular establishment and no appointment should be made on the regular posts in any of the Primary Schools before first appointing petitioner Nos. 19 and 20 on the said regular posts. If regular post is not likely to fall vacant within a reasonable time, in such case, the Head of the Department may send a proposal in consonance with the Circular of the Finance Department Annexure 'D' for converting such part time post into full time post. As and when such proposal is made, the concerned authority is directed to take appropriate decision as early as possible. Mr.Thakkar has also made it clear that at present the petitioners are paid salary on the basis of

their duty hours, i.e. four hours. If any extra work is taken and if they have to perform duty for more than five hours, they will be paid salary of full time employees.

#. The present petition is accordingly disposed of as per the directions given above regarding giving preference to petitioner Nos. 19 and 20 for the purpose of appointment if any regular post falls vacant in future and also if there is delay in giving such appointment, the Head of the Department may send appropriate proposal for converting the said post into full time post. No other direction is required to be given in the present petition at this stage.

#. In view of what is stated above, the petition is partly allowed to the aforesaid extent. Rule is made absolute to the extent stated above with no order as to costs.

(P.B.Majmudar,J)
(pathan)